IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.579 OF 2005
IN
SUIT NO.357 OF 1991

M/s.United Builders & Developers. ..Plaintiffs.

V/s.

Smt.Dhanubai M.Mhatre(since deceased)
& Ors. ..Defendants.

And

Municipal corporation of Gr.Mumbai. ..Respondent.

Mr.Jayesh Bhatt for Plaintiffs.

Mr.P.N.Mody i/b Pramodkumar & Co. for defendant No.3 to 25 and 27 and 31.

Mr.V.T.Bhagat for Defendant Nos. 33 to 35.

Mr. K.V.Gaikwad for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 12, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. By this chamber summons, the plaintiffs pray for amendment of the plaint in terms of schedule appended to chamber summons. Plaintiffs seek to implead the Municipal Corporation, Greater Mumbai as defendant No.37. Besides, plaintiffs seek to bring

on record subsequent development during the pendency of the present suit. In addition, the plaintiff seeks further relief against the defendant No.1 to 36 as well as proposed defendant No.37(corporation).

3. In so far as prayer for impleading Municipal Corporation, Greater Mumbai as proposed defendant No.37 is concerned, I have no hesitation in rejecting that request. This is so because, assuming that the suit is for specific performance, presence of Corporation will neither be necessary nor proper, as has been held by the Apex Court in the case of **Anil Kumar Singh V/s. Shivnath Mishra @ Gadasa Guru, (1995) 3 SCC 147.**

4. On rejection of this request for impleading proposed defendant No.37, it necessary follows that proposed relief of injunction also cannot be granted, which is directed against the Corporation. To that extent chamber summons is rejected.

5. In so far as assertions made in proposed paragraph 16A and 16B to be inserted in the plaint is concerned, that cannot be rejected as the same are subsequent developments during the pendency of the suit. The plaintiff is seeking introduction of the

said developments in the present suit and on that basis would support final relief claimed in the suit. To that limited extent chamber summons ought to succeed. In other words, amendment in terms of proposed paragraph 16A and 16B will have to be granted.

6. However, the counsel for the original owners defendant Nos. 3 to 36 has strenuously opposed for granting of this relief. According to him, the plaintiffs has not approached this court with clean hands. Plaintiffs have not disclosed the fact that the subsequent Notice of Motion was taken out being Notice of Motion No.968 of 1996, in which Municipal Corporation was made respondent and relief of injunction was prayed against the Corporation in the said Notice of Motion which prayer came to be rejected by order dated 12th August, 1997. Learned counsel for the said defendants relying on the decision of the Apex Court in the case of **D.L.F.United Pvt.Ltd. Vs. Pt.Prem Raj & Ors., AIR 1981 SC 805,** would contend that even in the present case, attempt of plaintiffs is to suppress adverse orders already passed against the plaintiffs in the Notice of Motion and the Appeal before the Division Bench of this court.

. In my opinion, however, the plaintiffs are entitled to bring on record subsequent developments as stated in paragraph 16A and 16B. The fact that injunction as prayed by the plaintiffs has been refused by this court on the earlier occasion, does not preclude the plaintiff to seek relief of deciding the suit on its own merit. The court will have to decide all the issues afresh on merits, after the evidence is adduced. In my opinion, therefore, plaintiffs are entitled to amend the plaint by introducing paragraph 16A and 16B as mentioned in Schedule appended to the chamber summons pertaining to the subsequent development during the pendency of suit.

7. In so far as, further relief claimed by way of introducing proposed prayer (h1) in paragraph IV of the Schedule, is concerned, the same will have to be rejected on the argument rightly canvassed on behalf of the defendants that the plaintiffs had already taken resort to application for Interim Injunction during the pendency of the suit on two occasions in the past. This would result in one more attempt of the plaintiffs to seek same relief during the pendency of the suit, which cannot be

countenenced. This proposed amendment of incerting prayer clause (h1) as set out in Schedule appended to the chamber summons is rejected.

8. Accordingly, Chamber Summons is partly allowed only to the extent of permitting plaintiffs to amend plaint by introducing paragraph 16A and 16B in the plaint after paragraph 16 of the plaint as articulated in Schedule appended to Chamber summons. Amendment to be carried out within four weeks. It will be open to the defendants to file supplementary written statement, in view of the amendment in the plaint. No order as to costs.